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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Information Ventures, Inc.

File: B-290785

Date: August 26, 2002

Bruce H. Kleinstein for the protester.

Mike Colvin, Department of Health and Human Services, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly failed to investigate whether competition existed to perform requirements prior to awarding a sole-source contract to perform such requirements is denied where the procurement was under simplified acquisition procedures and where the record showed that the contracting officer reasonably determined that, under the circumstances of the contract action, only one source was reasonably available.

DECISION

Information Ventures, Inc. protests the decision by the Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), to award a sole-source contract under solicitation No. 02m009110 to the National Association of Social Workers (NASW) for the services of a clinical social worker to provide assistance related to the National Child Traumatic Stress Initiative and various suicide prevention activities. Information Ventures argues that the agency improperly failed to investigate whether competition exists to perform the requirement.

We deny the protest.

On June 13, 2002, HHS, on behalf of SAMHSA, published a notice on the Federal Business Opportunities (FedBizOpps) website (www.fedbizopps.gov) expressing its intent to make a sole-source award, using simplified acquisition procedures, to the NASW in connection with the National Child Traumatic Stress Initiative. Among other things, the National Child Traumatic Stress Initiative, administered by SAMHSA's Center for Mental Health Services (CMHS), seeks to improve the quality,

effectiveness, and availability of therapeutic services to all children and their families who experience traumatic events. National Child Traumatic Stress Initiative website, <www.mentalhealth.org/cmhs/EmergencyServices/childstress.asp>. The notice indicated that the objective of this procurement, which has a 12-month period of performance, is to review, research and analyze literature in content areas relevant to the National Child Traumatic Stress Initiative; to investigate and document details of relevant events occurring worldwide; and to maintain the literature database. The notice stated that the sole-source determination was based upon the NASW's experience and expertise in child welfare, children's mental health, and trauma and terrorism issues, and established a closing date of June 28 for firms to provide information to be considered for the purposes of determining whether to conduct a competitive procurement.

Information Ventures subsequently contacted the contracting officer to assert that numerous small businesses could readily perform the tasks of literature identification, acquisition of documents, abstracting/analysis of documents, and keyboarding/entering information into a database, and suggested that it could provide the needed services by subcontracting with a social worker.

On June 21, the contracting officer published an amendment to the original synopsis on FedBizOpps to clarify that the services required were primarily those of a clinical social worker. The amendment stated that the National Child Traumatic Stress Initiative required the services of a clinical social worker to assist SAMHSA in identifying information for the program related to child trauma in the context of social work and to assist in the development of training programs targeted to key gatekeepers and other mental health professionals in the areas of post-traumatic stress, disaster mental health, and suicide prevention. The notice stated that it was both cost-effective and in the government's best interest to award the acquisition to the NASW, the world's largest organization of professional social workers, which serves as the ongoing professional resource following crisis intervention.

On June 26, Information Ventures filed the instant protest arguing that the agency improperly failed to investigate whether competition exists to perform the requirement. Award has been withheld pending resolution of the protest.

Under the Federal Acquisition Streamlining Act of 1994 (FASA), simplified acquisitions--used to purchase supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed \$100,000 (Federal Acquisition Regulation (FAR) §§ 2.101, 13.000, 13.003(a))--are excepted from the general requirement that agencies obtain full and open competition through the use of competitive procedures when conducting procurements.¹ See 41 U.S.C. §§ 253(a)(1)(A), (g)(1), and (g)(4) (2000).

¹ The independent government estimate for this procurement is \$97,076.

These simplified procedures are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, FASA only requires that agencies obtain competition to the maximum extent practicable when they utilize simplified acquisition procedures. 41 U.S.C. § 427(c); FAR § 13.104; Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 2.

Consistent with the maximum-extent-practicable standard, an agency may solicit from a single source if the contracting officer determines that, under the circumstances of the contract action, only one source is reasonably available. FAR § 13.106-1(b)(1). As a general rule, we will not object to a sole-source award unless it is shown that the agency acted without a reasonable basis. Aleman & Assocs., Inc., B-287275, May 17, 2001, 2001 CPD ¶ 93 at 3; see also Ion Exchange Prods., Inc., B-218578, B-218579, July 15, 1985, 85-2 CPD ¶ 52 at 4. We have reviewed the record here and find the agency's actions unobjectionable.

The focus of this requirement is to help government project officers identify gaps of unmet needs in order to improve the quality, effectiveness, provision and availability of therapeutic services delivered to all children and adolescents who experience traumatic events. Statement of Work (SOW) at 3; Contracting Officer's Statement at 1. The contracting officer's determination that, under the circumstances of this contract action, only one source was reasonably available--the NASW--rests on two intertwined factors.

First, the contracting officer states that the clinical training and working knowledge of an experienced social worker is required to adequately provide the relevant information. Such a person will be able to help maintain and update the SAMHSA database under specific topics with pertinent information relevant to program needs and social work and to identify weaknesses in service areas and make recommendations for future programmatic activities and interventions; one would need a thorough knowledge of the available facilities and expected outcomes in order to identify deficiencies in treatment and provision of services. The contracting officer explains that data input is but an incidental task comprising approximately 1 percent of the effort, and that an information scientist would lack the clinical experience to adequately perform a thorough needs assessment.

Second, and more important, the contracting officer states that it is necessary to the contract to have access to the NASW membership list for the purposes of communicating with experts in various fields. The NASW has a membership of more than 150,000 national and international social workers, NASW website, <www.naswdc.org>, and membership lists, which include contact information, are proprietary and not routinely made available to persons outside of the organization. Clinically trained social workers are the largest group of professionals providing mental health services and are often the only providers in medically underserved areas, and access to the NASW membership lists not only gives the agency the ability to communicate and obtain information directly from the NASW, but also provides a

means of dissemination to people with a vested interest in the field. As a result, contracting directly with any otherwise-qualified social worker, as Information Ventures proposes, would not meet the government's needs because those needs include access to the NASW membership.

Information Ventures' argument that the NASW Register of Clinical Social Workers is publicly available misses the point. As the agency explains, this register is not the membership list to which it requires access. The register is a resource of approximately 7,000 registered social workers who want their qualifications to be made public, while the NASW membership list contains more than 150,000 names and is not available to the public, except in limited and exceptional circumstances that require the approval of the NASW board. In this regard, the project officer states that it is possible to rent the list for only very limited requests, such as NASW-approved research projects and the distribution of information related to professional continuing education courses. While the protester argues that the register contains sufficient contact information to perform the contract, it is obvious that the membership lists will afford the agency a far more extensive source of information.

The protester's argument that access to the NASW membership list is not necessary to perform the work because the SOW does not mention its use is unpersuasive. Among other things, the SOW's requirement to assist the government project officer in identifying unmet information needs as they relate to child trauma in the context of social work includes the use of interviews with NASW staff and through information available from the NASW. SOW at 3. Moreover, it is clear from the record that the agency requires the ability to leverage the resources of the NASW to reap the benefits of its knowledge and skills. As the project officer explains, it is essential to be in touch with the NASW membership in order to elicit information about their activities and knowledge base and to provide them with information. The contract also relies on access to the NASW leadership to provide guidance in the development and implementation of specific activities outlined within the contract, and to lend credibility to the effort. The agency believes the NASW is the only organization with the resources necessary to affect the profession of social work and the field of mental health and the constituencies critical to the success of the program, and that its standing in the field allows its findings and recommendations to receive immediate acceptance by its members and audiences, which will be critical to the agency's mission.

Information Ventures has given us no basis to question the agency's expressed needs, no basis to find that the agency should have conducted more extensive market research under the circumstances, no basis to conclude that it could have met the government's needs, and no basis to conclude that the agency acted without a reasonable basis in awarding this sole-source contract. See Litton Computer Servs., B-256225.4, B-256225.5, July 21, 1994, 94-2 CPD ¶ 36 at 6 (proposed sole-source award was unobjectionable where protester's responses to notices consisted of minimal information and failed to establish that the firm could meet the

agency's requirements; as a result, the agency reasonably determined that only one firm could met the requirements).

Finally, Information Ventures argues that the SOW improperly contemplates the award of a personal services contract. A personal services contract is one that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees. See FAR §§ 37.101, 37.104. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. FAR § 37.104(a). Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. Id. Agencies may not award personal services contracts unless specifically authorized by statute to do so. FAR § 37.104(b).

Whether a solicitation would result in a personal services contract must be judged in the light of its particular circumstances, with the key question being whether the government will exercise relatively continuous supervision and control over the contractor personnel performing the contract. FAR § 37.104(c)(2); Carr's Wild Horse Ctr., B-285833, Oct. 3, 2000, 2000 CPD ¶ 210 at 7.

We do not believe the requirements of this contract will create an employer-employee relationship between the government and the contractor's personnel. There is no indication from the solicitation that the government will exercise relatively continuous supervision and control over the contractor personnel. While the government project officer will monitor all work under the project, the solicitation clearly provides that the contractor shall "[i]ndependently, and not as an agent of the Government," exert its best efforts and furnish the necessary personnel to perform the work. SOW at 3. Contrary to the protester's suggestion, that the work will be performed on-site is merely indicative of the fact that it would be expensive and burdensome for the agency to make essential confidential documents available outside of its offices and to modify the agency's computer system to permit off-site access to a database system. We agree with the agency that the contractor will have ultimate control in determining how best to fulfill its contractual obligations, and that this protest ground is without merit. Carr's Wild Horse Ctr., supra.

The protest is denied.

Anthony H. Gamboa
General Counsel